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ARTICLE 132
PAPER NUMBER 132

DATE MAILED: 09/04/91

THE FOLLOWING INFORMATION IS FOR THE OFFICE OF THE COMMISSIONER OF PATENTS AND TRADEMARKS
NAME OF THE APPLICANT AND FILING DATE

☐ This application has been examined ☒ Responsive to communication filed on 4/19/91
6/3/91 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-8, 11, 21-28 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 9, 10, 12-18, 19, 20 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-8, 11, 21-28 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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The change of inventorship adding Roger Jeffcoat has not been approved. The declaration states that the contribution of the inventor sought to be added is directed to claims 12-18. No such claims or comparable claims are at present in this application.

References have been canceled from Applicants' submitted Form-1449. The AM and AN references are not prior art teachings.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-8, 11 and 21-28 are rejected under 35 U.S.C.

§ 102(e) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Tomita et al.

Tomita et al disclose hydrolyzed konnyaku (konjak) having an average molecular weight of 2,000 to 15,000. It is not seen that the claims define a patentable new product. The associations claims to in some of the claims, e.g. claim 25, are not seen to be patentably significant. Patentees show food and beverage associations. Dietary sweeteners are commonly associated with foods and the limitation of some of the claims are not seen to patentably distinguish over the conventional use of such sweeteners. In other words, the use of dietary sweeteners in the food and beverage environments of the applied reference would be prima facie obvious.

Claims 1-8, 11, 21 and 22 are rejected under 35 U.S.C. § 102

(a) as being anticipated by Schnepf et al (PCT/EP89/01207).

It is not seen how the instant claims distinguish over the enzymatic hydrolyzed heteropolysaccharides of the reference.

That "Schnepf does not disclose the use of decomposed heteropolysaccharides in foods" is not considered particularly relevant to the claims.

Claims 1-8, 11 and 21-28, all the claims in the case, are rejected under 35 U.S.C. § 102(a) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Kemaris et al (WO 89/02900).

Kemaris et al, as pointed out by Applicants, discloses materials of the type claimed, as thickening agents. It is not seen that the claims define patentably over that which is taught by the reference. The combinations claimed in some of the claims are not seen to be patentably significant. Thickening agents are commonly used with foods and dietary sweetener combinations. To use the thickener of the reference in the combinations claimed in some of the claims would have only involved the ordinary skill of one in the art.

Claims 1-8, 11 and 21-28, all the claims in the case, are rejected under 35 U.S.C. § 103 as being unpatentable over Hill in view of the admitted state of the art (Barnett et al) for the

reasons advanced in the last office action in rejecting the claims. The new claims and the amendment to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Applicant's arguments filed June 3, 1991 have been fully considered but they are not deemed to be persuasive.

While Applicants acknowledge that the rejections advanced includes the rejection on the combination of the teachings of the art, the thrust of the argument is based on patentability over each reference per se. Arguments which do not address the rejection as applied are not pertinent.

While Applicants description of Hill is factually correct, Applicants overlook the specific teachings specifically referred to. Attention is again directed to col. 9, first complete paragraph where the reference teaches "after at least partial depolymerization and/or hydrolyses". The reference is more broadly directed to hydrolysis than specifically addressed by Applicants.

Applicants arguments directed to Barnett are not particularly relevant since the argument ignores that Barnett was applied in combination. The applied Hill teaches hydrolysis broadly of a generic family of carbohydrates including the

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materials of Barnett et al. Barnett et al teach depolymerization to the extent claimed and to hydrolyze the products of Hill to the extent of Barnett would have only involved the ordinary skill of one in the art.

Applicants arguments directed to the art applied and cited are tangential and do not address the specific pertinency of the art relied upon and cited to further show the state of the art. Dartey again and in fact discloses that hydrocolloids as functionally effective as bulking agents which Applicants choose to disregard. See again col. 15, first complete paragraph.

All of Applicants' arguments have been considered. None of them are convincing of patentability.

No claim is allowed.

Any inquiry concerning this communication should be directed to Joseph Golian at telephone number (703) 308-3830.

Joseph Golian/om
August 27, 1991
August 30, 1991

JOSEPH GOLIAN
PRIMARY EXAMINER
ART UNIT 132